

Minnesota Rules, Chapter 4400.

GENERALLY

4400.0200 DEFINITIONS.

Subpart 1. Scope. As used in this chapter, the following terms have the meanings given them.

Subp. 2. Act. "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes, sections 116C.51 to 116C.69.

Subd. 2a. Associated facilities. "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line.

Subp. 3. Board. "Board" means the Minnesota Environmental Quality Board.

Subp. 3a. Chair. "Chair" means the person who is the Chair of the Minnesota Environmental Quality Board.

Subp. 4. Certified HVTL List. "Certified HVTL List" means the list of transmission projects certified by the Minnesota Public Utilities Commission as a priority project under Minnesota Statutes section 216B.2425.

~~Subp. 4. Community benefits. "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines, and increased tax base.~~

~~Subp. 5. Construction. "Construction" means:~~

~~A. any clearing of land, excavation, or other improvement that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions; or~~

~~B. the modifications necessary to:~~

~~(1) increase the nominal voltage of an existing transmission line to over 200 kilovolts; or~~

~~(2) increase the nominal voltage of an existing HVTL.~~

~~Subp. 6. Developed portion of plant site. "Developed portion of plant site" means the portion of the LEPGP site, exclusive of makeup water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.~~

Subp. 6a. Environmental Assessment. "Environmental assessment" or "EA" means a written document that describes the human and environmental impacts of a proposed HVTL or LEGPG and alternative sites or routes and methods to mitigate such impacts.

~~Subp. 6b.a. Environmental impact statement. Environmental impact assessment; EIA. "Environmental impact assessment" or "EIA" "Environmental impact statement" or "EIS" means a detailed written statement that describes proposed HVTLs and LEGPGs and satisfies the requirements of Minnesota Statutes, section 116D.04.~~

Subp. 7. EQB. "EQB" means the entire agency, including the board and the staff.

~~Subp. 7. File. "File" means to deliver 40 copies to the office of the chair of the board.~~

Subp. 8. High voltage transmission line; HVTL. "High voltage transmission line" or "HVTL" means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 2 100 kilovolts or more either immediately or without significant modification. Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.

Subp. 9. Large electric power facilities. "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subp. 10. Large electric power generating plant; ~~LEPGP~~. "Large electric power generating plant" ~~and or~~ "LEPGP" means electric power generating equipment and associated facilities designed for or and capable of operation at a capacity of 50,000 kilowatts or more.

~~Subp. 11. Large electric power generating plant study area. "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type, and design.~~

Subp. 12. Person. "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

~~Subp. 13. Prime farmland. "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations title 7, section 657.5 (a).~~

~~Subp. 14. Public adviser. "Public adviser" means a staff person designated by the board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.~~

Subp. 15. Right-of-way. "Right-of-way" means the land interest required within a route for the construction and operation of an HVTL.

Subp. 16. Route. "Route" means an area of land up to 1.25 miles wide within which a right-of-way for an HVTL can be located.

Subp. 17. Route segment. "Route segment" means a portion of a route.

Subp. 18. Site. "Site" means an area of land required for the construction and operation of an LEPPG.

~~Subp. 19. Technical assumptions. "Technical assumptions" means the assumptions necessary to evaluate resource requirements of LEPPG of a specified capacity, fuel type, and design and to evaluate the availability of resources to meet those requirements.~~

Subp. 20. Utility. "Utility" means any entity engaged in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

4400.0300 PURPOSE AND AUTHORITY.

Parts 4400.0200 to 4400.4900 are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the board in the Power Plant Siting Act, as amended, Minnesota Statutes, sections 116C.51 to 116C.69, to give effect to the purposes of the act.

It is the purpose of the act and the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall provide for broad spectrum citizen participation as a principle of operation. To ensure effective citizen participation, the board shall maintain a public education program on but not limited to, the considerations identified in Minnesota Statutes, section 116C.57, subdivision 4.

4400.0400. PERMIT REQUIREMENT.

Subpart 1. Site Permit. No person may construct a large electric power generating plant without a site permit from the board. A large electric power generating plant may be constructed only on a site approved by the board.

Subp. 2. Route permit. No person may construct a high voltage transmission line without a route permit from the board. A high voltage transmission line may be constructed only along a route approved by the board.

Subp. 3. Expansion of Existing Facility. No person shall expand an existing large electric power generating plant or a high voltage transmission line without a permit from the board. No person shall expand an existing electric power plant or an existing transmission line to exceed the definitional thresholds for a large electric power generating plant or a high voltage transmission line without a permit from the board.

Subp. 4. Local Authority. A site permit from the board is not required for a large electric power generating plant that is permitted by local governmental authorities under Minnesota Statutes section 116C.576. A route permit from the board is not required for a high voltage transmission line that is permitted by local governmental authorities under Minnesota Statutes section 116C.576.

Subp. 5. Commencement of Construction. No person shall commence construction of a LEPGP or a HVTL for which a permit from the board is required until a permit shall have been issued by the board. "Commence construction" means to begin or cause to begin as part of a continuous program the placement, assembly, or installation of facilities or equipment, or to conduct significant site preparation or route preparation work for installation of facilities or equipment, or to enter into binding contractual obligations for the purchase of facilities or equipment for a large electric power generating plant or high voltage transmission line. Conducting survey work or collecting geological data or contacting landowners to discuss possible construction of a power plant or transmission line is not commencement of construction.

FULL PERMITTING PROCESS FOR LARGE ELECTRIC POWER FACILITIES.

4400.1000. PERMIT APPLICATION UNDER FULL PERMITTING PROCESS.

Subpart 1. Filing of Application for Permit. Any person seeking a site permit or route permit for a large electric power facility shall file three copies of the application for the permit with the EQB. Upon acceptance of the application, the chair will advise the applicant of how many more copies of the application must be submitted to the EQB.

Subp. 2. Electronic Copy. Any person filing an application for a site permit or route permit shall provide the EQB with an electronic version of the application suitable for posting on the board's web page. An applicant may request the chair to waive this

requirement completely or for part of the application if an electronic version of the application is difficult or expensive for the applicant to obtain.

4400.1050. PERMIT FEES

Subpart 1. Requirement. Every applicant for a site permit or route permit shall pay a fee in accordance with the requirements of Minnesota Statutes section 116C.69. The estimated fee for processing the permit application shall be determined in accordance with the requirements of section 116C.69.

Subp. 2. Initial Payment. The applicant shall submit with the application 50 percent of the total estimated fee. The chair will not process a permit application until the first portion of the fee is submitted. The EQB shall deposit all money received from an applicant for permit fees in a special account.

Subp. 3. Additional Payments. The applicant shall pay another 25 percent of the fee within 90 days after the application has been accepted by the chair. Additional payments shall be made within thirty days of notification by the chair that additional fees are necessary for completion of the permitting process. The board will not make a final decision on a permit application if any assessed fees have not been paid.

Subp. 4. Final Accounting. At the end of the permitting process, including any judicial review of the board's final decision, the EQB shall provide a final accounting to the applicant of the total cost of processing the permit application. The applicant may review all actual costs associated with processing an application and present objections to the board. The application fees paid by the applicant shall include the necessary and reasonable expenses incurred in processing the application, including but not limited to staff time, expenses for public notice and meetings and hearings, environmental review, administrative overhead, and legal expenses. The applicant shall make the final payment within thirty days of notification, or the EQB shall refund any excess payments within thirty days of the final accounting.

4400.1100. CONTENTS OF APPLICATION.

Subpart 1. Site Permit for LEPGP. An application for a site permit for a LEPGP shall contain the following information:

- A. a statement of proposed ownership of the facility as of the day of filing and after completion of construction;
- B. the precise name of any person or organization to be named as permittee(s);
- C. at least two proposed sites for the proposed LEPGP and identification of the applicant's preferred site and the reasons for preferring the site;

- D. a description of the proposed LEPGP and all associated facilities, including the size and type of the facility;
- E. the name of the owner of the property where the sites are proposed;
- F. the engineering and operational design for the LEPGP at each of the proposed sites;
- G. a cost analysis of the LEPGP at each proposed site, including the costs of constructing and operating the facility that are dependent on design and site;
- H. an engineering analysis of each of the proposed sites including how each site could accommodate expansion of generating capacity in the future;
- I. identification of transportation, pipeline, and electrical transmission systems that will be required to maintain and operate the facility;
- J. a listing and brief description of federal and state permits that may be required for the project at each proposed site; and
- K. a copy of the Certificate of Need for the project from the Minnesota Public Utilities Commission or documentation that an application for a Certificate of Need has been submitted.

Subp. 2. Route Permit for HVTL. An application for a route permit for a HVTL shall contain the following information:

- A. a statement of proposed ownership of the facility at the time of filing the application and after completion of construction;
- B. the precise name of any person or organization to be named as permittee(s);
- C. at least two proposed routes for the proposed HVTL and identification of the applicant's preferred route and the reasons for the preference;
- D. a description of the proposed HVTL and all associated facilities, including the size and type of the HVTL;
- E. identification of all land uses along the proposed routes and the ownership of the land to be crossed by the HVTL;
- F. section maps showing the entire length of the HVTL on all proposed routes;

- G. identification of all existing rights-of-way along or parallel to the proposed routes;
- H. the engineering and operational design concepts for the proposed HVTL, including a characterization of the electrical environment of the transmission line;
- I. cost analysis of each route, including the costs of constructing, operating, and maintaining the HVTL that are dependent on design and route;
- J. a description of possible design options to accommodate expansion of the transmission capacity in the future;
- K. the procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;
- L. a listing and brief description of federal and state permits that may be required for the proposed HVTL; and
- M. a copy of the Certificate of Need or the Certified HVTL List containing the proposed HVTL.

Subp. 3. Environmental Information. An applicant for a site permit or a route permit shall include in the application the following environmental information for each proposed site or route to aid in the preparation of an Environmental Impact Statement:

- A. a description of the environmental setting for each site or route;
- B. a description of the effects of the facility on human settlement, including but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- C. a description of the effects of the facility on land-based economies, including but not limited to, agriculture, forestry, tourism, and mining;
- D. a description of the effects of the facility on archaeological and historic resources;
- E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and plants and animals;
- F. a description of the sociological impacts from construction and operation of the project;

G. a description of the effects of the facility on rare and unique natural resources;

H. identification of all human and natural environmental effects that cannot be avoided if the facility is approved; and

I. a description of measures that might be implemented to mitigate the adverse human and environmental impacts anticipated to be caused by the facility.

4400.1200. REVIEW OF APPLICATION.

Subpart 1. Review by Chair. Within ten days of receipt of an application for a site permit or route permit, the chair shall determine whether the application is complete and notify the applicant in writing of the acceptance or rejection of the application. If the chair should reject an application, the chair shall advise the applicant of the deficiencies in the application.

Subp. 2. Resubmission of Rejected Application. If the chair should reject an application, an applicant may decide to address the deficiencies identified by the chair and resubmit the application with additional information. In such event, the chair shall again review the application within ten days and determine whether the application is complete and advise the applicant of the chair's determination.

Subp. 3. Reasons for Rejection. The chair shall not reject an application if the information that is missing can be obtained from the applicant within sixty days from the date of the rejection letter and the lack of the information will not interfere with the public's ability to review the proposed project.

Subp. 4. Schedule. The date of the chair's determination that an application is complete shall mark the start of the schedule for the board to make a final decision on a permit application.

4400.1300. NOTICE OF THE PROJECT.

Subpart 1. List of Interested Persons. The EQB shall maintain a list of persons who want to be notified of the acceptance of applications for site permits or route permits. Any person may request to have his or her or its name included on the list. The EQB may from time to time request that persons whose names are on the list advise the EQB whether they want to remain on the list, and the EQB may delete any names for which an affirmative response is not received within a reasonable time. Any person whose name has been removed may request to have the name added to the list.

Subp. 2. Notification to Persons on List. Within fifteen (15) days of submission of an application to the EQB, the applicant shall send written notice of the fact that an application has been submitted and a description of the proposed project to those persons

whose names are on the list maintained by the EQB for such purpose. The notice shall also advise the persons where a copy of the application may be reviewed.

Subp. 3. Publication of Notice. Within fifteen (15) days of submission of an application to the EQB, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site or route or any alternative is proposed to be located that an application has been submitted and a description of the proposed project. The notice shall also state where a copy of the application may be reviewed.

Subp. 4. Notification of Local Officials. Within fifteen (15) days of submission of an application to the EQB, the applicant shall send a copy of the application by certified mail to each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located.

Subp. 5. Notification of Property Owners. Within fifteen (15) days of submission of an application to the EQB, the applicant shall send written notice of the fact that an application has been submitted and a description of the proposed project to each owner whose property is adjacent to any of the proposed sites for a power plant or along any of the proposed routes for a transmission line. The notice shall also advise the owners where a copy of the application may be reviewed. For purposes of giving notice under this subpart, owners shall be those persons shown on the records of the county auditor, or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.

Subp. 6. Notification of Chair Decision on Completeness of Application. If the chair has accepted or conditionally accepted an application before the notice required in this rule is given, the applicant shall also include in the notice a statement announcing the chair's decision. If the chair has rejected an application, the applicant may elect to withhold giving of the required notice until the application has been resubmitted and accepted. In such event, the applicant shall advise the chair before the expiration of the fifteenth day that the applicant will not be sending out the required notice.

Subp. 7. Confirmation of Notice. Within thirty (30) days after providing the requisite notice, the applicant shall submit to the EQB documentation that the notice has been given. The applicant shall document the giving of the notice by providing the EQB with affidavits of publication or mailing and copies of the notice provided.

Subp. 8. Failure to Give Notice. The failure of the applicant to give the requisite notice shall not invalidate any ongoing permit proceedings, provided the applicant has made a bona fide attempt to comply, although the chair may extend the time for the public to participate if such failure has interfered with the public's right to be informed about the project.

4400.1400. PUBLIC ADVISOR.

Upon acceptance of an application for a site or route permit, the chair shall designate a staff person to act as the public advisor on the project. The public advisor shall be available to answer questions from the public about the permitting process. The public advisor shall not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor shall not act as an advocate on behalf of any person.

4400.1500. PUBLIC MEETING.

Subpart 1. Scheduling Public Meeting. Upon acceptance of an application for a site or route permit, the chair shall schedule a public meeting to provide information to the public about the proposed project and to answer questions and to scope the environmental impact statement. The public meeting shall be held no later than sixty days after acceptance of the application. The public meeting shall be held in a location that is convenient for persons who live near the proposed project.

Subp. 2. Notice of Public Meeting. The EQB shall give at least ten days notice of the public meeting by sending notice to persons whose names are on the list maintained pursuant to part 4400.1300, subpart 1 and to other persons known to the EQB to be interested in the specific project. The EQB shall also publish notice of the public meeting in a legal newspaper of general circulation in the area where the project is proposed to be located. If appropriate, the EQB may request the applicant to include notice of the public meeting in the notice to be provided by the applicant pursuant to part 4400.1300.

Subp. 3. Conduct of Public Meeting. The chair shall appoint a person, who may be an EQB staff person, to conduct the public meeting. The public meeting shall be conducted in an informal manner designed to encourage public participation. The public shall be afforded an opportunity to present comments and ask questions. The EQB shall make available at the public meeting a copy of the application and other pertinent documents in the EQB files regarding the application. The staff shall explain the permitting process to the persons in attendance. A transcript of the meeting is not required to be maintained, although the EQB may elect to keep an audio recording of the meeting.

Subp. 4. Applicant Role. The applicant shall provide representatives at the public meeting who are capable of answering general questions about the proposed project.

Subp. 5. EIS Scoping. At the public meeting the public shall be provided an opportunity to comment on the scope of the environmental impact statement in accordance with part 4400.1700.

4400.1600. CITIZEN ADVISORY TASK FORCE.

Subpart 1. Chair Authority. The board delegates to the chair the authority to appoint a citizen advisory task force. The chair shall determine whether to appoint such a task force as early in the process as possible. The chair shall establish the size of the task force and appoint its members in accordance with the requirements of Minnesota Statutes section 116C.59. The chair shall advise the board of the appointment of the task force at the next monthly board meeting.

Subp. 2. Board Decision. If the chair should decide not to appoint a citizen advisory task force, and a person would like such a task force appointed, the person may request that the board create a citizen advisory task force and appoint its members. Upon receipt of such a request, the chair shall place the matter on the agenda for the next regular monthly meeting of the board.

Subp. 3. Task Force Responsibilities. Upon appointment of a citizen advisory task force, the chair or the board, whichever creates the task force, shall specify in writing the charge to the task force. The charge shall include the presentation of a recommendation on a site or route for the project and the identification of additional sites or routes or particular impacts to be evaluated in the environmental impact statement. The chair or the board may establish additional charges.

Subp. 4. Termination of Task Force. The task force shall expire upon completion of its charge, upon designation by the chair of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the board or the chair in the charge, whichever occurs first.

4400.1700. PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT.

Subpart 1. Environmental Impact Statement Required. The EQB shall prepare an environmental impact statement on each proposed large electric generating plant and each proposed high voltage transmission line for which a permit application has been accepted by the chair.

Subp. 2. Scoping Process. The EQB shall provide the public with an opportunity to participate in the development of the scope of the EIS by holding a public meeting and by soliciting public comments. The public meeting required under part 4400.1500 shall satisfy this requirement to hold a scoping meeting. The chair shall determine the scope of the environmental impact statement as soon after holding the public meeting as possible. The EQB shall mail notice of the scoping decision to those persons who have requested such notice within three days after the decision. Once the chair has determined the scope of the EIS, the scope shall not be changed except upon decision by the board that new information justifies a change.

Subp. 3. Alternative Sites or Routes. During the scoping process, any person may suggest alternative sites or routes to evaluate in the environmental impact statement.

Any person desiring that a particular site or route be evaluated shall submit to the EQB, during the scoping process, an explanation of why the site or route should be included in the EIS and any other supporting information the person wants the chair to consider.

Subp. 4. Scope of the EIS. The scoping process shall be used to reduce the scope and bulk of an EIS by identifying the potentially significant issues and alternatives requiring analysis and establishing the detail into which the issues will be analyzed. The scoping decision by the chair shall at least address the following:

- A. the issues to be addressed in the EIS;
- B. the alternative sites and routes to be addressed in the EIS; and
- C. the schedule for completion of the EIS.

Subp. 5. Matters Excluded. When the Minnesota Public Utilities Commission has issued a Certificate of Need for a LEPGP or a HVTL or placed a high voltage transmission line on the Certified HVTL List maintained by the Commission, the EIS shall not address questions of need, including size, type, and timing, questions of alternative system configurations, or questions of voltage.

Subp. 6. Draft EIS. The Draft EIS shall be written in plain and objective language. The Draft EIS shall follow the standard format for an EIS prescribed in Minnesota Rules part 4410.2300 to the extent the requirements of that rule are appropriate.

Subp. 7. Public Review. Upon completion of the Draft EIS, the EQB shall make the document available for public review by placing a copy of the document in a public library or other governmental office in each county where the proposed project may be located. The EQB shall send notice of the availability of the Draft EIS to each person on the list maintained by the board under part 4400.1300, subpart 1. The EQB shall also place a notice in the EQB Monitor of the availability of the Draft EIS.

Subp 8. Informational Meeting. The EQB shall schedule an informational meeting to provide an opportunity for the public to comment on the Draft EIS. The meeting shall not be held sooner than twenty (20) days after the Draft EIS becomes available. The meeting shall be held in a location convenient to persons who live near the proposed project. The EQB shall send notice of the informational meeting to each person on the list maintained by the EQB under part 4400.1300, subpart 1. The EQB shall also place notice in the EQB Monitor. The informational meeting may be held just prior to the holding of a contested case hearing on the permit application. The EQB shall hold the record on the EIS open for receipt of written comments for not less than ten days after the close of the informational meeting.

Subp. 9. Final EIS. The EQB shall respond to the timely substantive comments received on the draft EIS consistent with the scoping decision and prepare the final EIS.

The EQB may attach to the Draft EIS the comments received and its response to comments without preparing a separate document. The EQB shall publish notice of the availability of the Final EIS in the EQB Monitor and shall supply a press release to at least one newspaper of general circulation in the areas where the proposed sites or routes are located.

Subp. 10. Adequacy Determination. The board shall determine the adequacy of the Final EIS. The board shall not decide the adequacy for at least ten days after the availability of the Final EIS is announced in the EQB Monitor. The Final EIS shall be adequate if it:

- A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;
- B. provides responses to the timely substantive comments received during the Draft EIS review process; and
- C. was prepared in compliance with the procedures set forth in chapter 4400.

Subp. 11. Cost. The applicant for a site permit or route permit shall pay the reasonable costs of preparing and distributing an EIS. The costs shall not be assessed separately from the assessment under part 4400.1050 unless that assessment is inadequate to cover the board's reasonable costs of considering the permit application.

Subp. 12. Environmental Review Requirements. The requirements of Minnesota Rules chapter 4410 shall not apply to the preparation or consideration of an EIS for a Large Electric Generating Power Plant or High Voltage Transmission Line except as provided herein.

4400.1800. CONTESTED CASE HEARING.

Subpart 1. Hearing. The EQB shall hold a contested case hearing on all applications for a site permit or a route permit. The hearing shall be conducted by an administrative law judge from the office of administrative hearings pursuant to the contested case procedures of Minnesota Statutes chapter 14. Notice of the hearing shall be given in accordance with the requirements of Minnesota Statutes section 116C.57, subdivision 2d.

Subp. 2. Joint Hearing. If the board determines that a joint hearing with the Minnesota Public Utilities Commission to consider both permitting issues and need issues is feasible, more efficient, and may further the public interest, the board may decide to hold a joint hearing with the approval of the Commission.

4400.1900. FINAL DECISION.

Subpart 1. Timing. The board shall make a final decision on a site permit or route permit application within 60 days after receipt of the report of the administrative law judge. A final decision shall be made within one year after the chair's determination that an application is complete. The board may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. EIS Adequacy. The board shall not make a final decision on a permit until the board shall have found the EIS to be adequate.

Subp. 3. State Register. The EQB shall publish notice of its final permit decision in the State Register within 30 days of the day the board makes the decision. The EQB shall also publish notice in the EQB Monitor.

ALTERNATIVE PERMITTING PROCESS FOR CERTAIN FACILITIES.

4400.2000. QUALIFYING PROJECTS.

Subpart 1. Qualifying Projects. An applicant for a site permit or a route permit for one of the following projects may elect to follow the procedures of parts 4400.2000 to 4400.2900 instead of the full permitting procedures in parts 4400.1000 to 4400.1900:

- A. large electric power generating plants with a capacity of less than 80 megawatts;
- B. large electric power generating plants that are fueled by natural gas.
- C. high voltage transmission lines of between 100 and 200 kilovolts;
- D. high voltage transmission lines in excess of 200 kilovolts and less than five miles in length in Minnesota;
- E. high voltage transmission lines in excess of 200 kilovolts if at least 80 percent of the distance of the line in Minnesota will be located along existing high voltage transmission line right-of-way;
- F. a high voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and
- G. a high voltage transmission line rerouting to serve the demand of a single customer when the rerouted line will be located at least 80 percent on property owned or controlled by the customer or the owner of the transmission line.

Subp. 2. Notice to Board. An applicant for a permit for one of the above qualifying projects who intends to follow the procedures of parts 4400.2000 to 4400.2700 shall notify the EQB of such intent in writing at least ten days before submitting an application for the project.

4400.2010. PERMIT APPLICATION FOR ALTERNATIVE PERMITTING PROCESS.

The provisions of part 4400.1000 relating to submission of a permit application shall apply to projects being considered under the alternative permitting process.

4400.2050. PERMIT FEES.

The provisions of part 4400.1050 relating to permit fees shall apply to projects being considered under the alternative permitting process.

4400.2100. CONTENTS OF APPLICATION.

The applicant shall include in the application the same information required in part 4400.1100 for nonqualifying projects, except the applicant need not propose any alternative sites or routes to the preferred site or route. If the applicant has rejected alternative sites or routes, the applicant shall include in the application the identity of such rejected sites or routes and an explanation of the reasons for rejecting them.

4400.2200. REVIEW OF APPLICATION.

The provisions of part 4400.1200 regarding the chair's review of the application shall apply to projects being considered under the alternative permitting process.

4400.2300. NOTICE OF THE PROJECT.

The provisions of part 4400.1300 regarding obligations to give notice of the project shall apply to projects being considered under the alternative permitting process.

4400.2400. PUBLIC ADVISOR.

The provisions of part 4400.1400 regarding appointment of a public advisor shall apply to projects being considered under the alternative permitting process.

4400.2500. PUBLIC MEETING.

Subpart 1. Public Meeting. The provisions of part 4400.1500, subparts 1 - 4 shall apply to projects being considered under the alternative permitting process.

Subp. 2. Environmental Assessment. At the public meeting the public shall be provided an opportunity to comment on the scope of the environmental assessment in accordance with part 4400.2700.

4400.2600. CITIZEN ADVISORY TASK FORCE.

The provisions of part 4400.1600 regarding the appointment of a citizen advisory task force shall apply to projects being considered under the alternative permitting process.

4400.2700. PREPARATION OF ENVIRONMENTAL ASSESSMENT.

Subpart 1. Environmental Assessment Required. The EQB shall prepare an environmental assessment on each proposed large electric power generating plant and each proposed high voltage transmission line being reviewed under the alternative permitting process in parts 4400.2000 to 4400.2900. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and of alternative sites or routes identified by the chair and shall address mitigating measures for all sites or routes considered.

Subp. 2. Scoping Process. The EQB shall provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments. The public meeting required under part 4400.2500 shall satisfy this requirement to hold a scoping meeting. The chair shall determine which possible sites or routes to include and what human and environmental impacts to assess in the environmental assessment as soon after holding the public meeting required by part 4400.2500 as possible. The EQB shall mail notice of the scoping decision to those persons who have requested such notice within three days after the decision. Once the chair has determined the scope of the environmental assessment, the scope shall not be changed except upon decision by the board that new information justifies a change.

Subp. 3. Alternative Sites or Routes. Any person may suggest alternative sites or routes to evaluate in the environmental assessment. Any person desiring that a particular site or route be evaluated shall submit to the chair, during the scoping process, an explanation of why the site or route should be included in the EA and any other supporting information the person wants the chair to consider.

Subp. 4. Content of the EA. The environmental assessment shall include:

- A. a general assessment of the human and environmental impacts identified in the scoping process for each alternative assessed;
- B. a discussion of mitigating measures for each alternative assessed; and
- C. a discussion of other matters identified in the scoping process

Subp. 5. Matters Excluded. When the Minnesota Public Utilities Commission has issued a Certificate of Need for a LEPGP or HVTL or placed a high voltage transmission line on the Certified HVTL List maintained by the Commission, the EA shall not address questions of need, including size, type, and timing, questions of alternative system configurations, or questions of voltage.

Subp. 6. No Additional Environmental Review. An environmental assessment shall be the only state environmental review document required to be prepared on a project qualifying for review under the alternative review process. No environmental assessment worksheet or environmental impact statement shall be required.

Subp. 7. Cost. The cost of the preparation of an environmental assessment shall be assessed to the applicant as part of the application fee.

4400.2800. PUBLIC HEARING.

Subpart 1. Public Hearing. The EQB shall hold a public hearing once the environmental assessment has been completed. The hearing shall be held in an area where the facility is proposed to be located. Notice of the hearing shall be given in accordance with the requirements of Minnesota Statutes section 116C.57, subdivision 2d.

Subp. 2. Hearing Examiner. The chair shall appoint a person to act as the hearing examiner at the public hearing. The hearing examiner may be an employee of the EQB. The hearing examiner shall set the date and place for the hearing and provide notice to the public. The hearing examiner may make such rulings as are required to conduct the hearing in a fair and impartial and expeditious manner, including the authority to maintain decorum at the hearing, to exclude repetitious or irrelevant testimony, to limit the amount of time for oral testimony, and to continue the hearing from time to time as needed. Persons may testify at the hearing without being first sworn under oath. The hearing examiner shall ensure that the record created at the hearing is preserved and transmitted to the board. A transcript or audio recording of the hearing shall be made. The hearing examiner shall not prepare a report and shall not make any recommendation to the board.

Subp. 3. Hearing Procedure. The hearing shall be conducted in essentially the following manner, although the hearing examiner may vary the order in which the hearing proceeds:

- A. the staff shall make a brief presentation to describe the project, to explain the process to be followed, and to introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- B. the applicant shall introduce its evidence by way of testimony and exhibits;

- C. the public shall be afforded an opportunity to make an oral presentation, to present documentary evidence, and to ask questions of the applicant and the staff;
- D. the hearing examiner shall provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing;
- E. the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the chair within three days of the close of the record.

Subp. 4. Environmental Assessment. Interested persons may comment upon the environmental assessment at the public hearing. Comments on the EA shall become part of the record in the proceeding but the board shall not be required to revise or supplement the environmental assessment document.

4400.2900. FINAL DECISION

Subpart 1. Timing. The board shall make a final decision on a site permit or route permit application within 60 days after receipt of the record from the hearing examiner. A final decision shall be made within six months after the chair's determination that an application is complete. The board may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subp. 2. State Register. The EQB shall publish notice of its final permit decision in the State Register within 30 days of the day the board makes the decision. The EQB shall also publish notice in the EQB Monitor.

GENERAL PERMIT REQUIREMENTS

4400.3000. STANDARDS AND CRITERIA.

No site permit or route permit shall be issued in violation of the site selection standards and criteria established in Minnesota Statutes sections 116C.57 and 116C.575 and in rules adopted by the board. The board shall issue a permit for a proposed facility when the board finds that the facility is consistent with state goals to conserve resources, minimize environmental impacts, and minimize human settlement and other land use conflicts, and ensures the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.

4400.3100. FACTORS CONSIDERED.

In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the board shall consider the following factors:

- A. effects on human settlement, including but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- B. effects on public health and safety;
- C. effects on land-based economies, including but not limited to, agriculture, forestry, tourism, and mining;
- D. archaeological and historic resources;
- E. effects on the natural environment;
- F. rare and unique natural resources;
- G. application of design options which maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing LEPGP sites;
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;
- ~~K~~. electrical system reliability;
- ~~L~~. costs of constructing, operating, and maintaining the facility ~~HVTL~~ which are dependent on design and route; and
- ~~M~~~~K~~. adverse human and natural environmental effects which cannot be avoided.
- N. irreversible and irretrievable commitments of resources

4400.3200. FACTORS EXCLUDED.

When the Minnesota Public Utilities Commission has issued a Certificate of Need for a LEPGP or a HVTL or placed a high voltage transmission line on the Certified HVTL List maintained by the Commission, questions of need, including size, type, and timing, questions of alternative system configurations, and questions of voltage shall not be factors considered by the board in deciding whether to issue a permit for a proposed facility.

4400.3300. PROHIBITED ROUTES.

Subpart 1. Wilderness Areas. No high voltage transmission line shall be routed through state or national wilderness areas.

Subp. 2. Parks and Natural Areas. No HVTL shall be routed through state or national parks or state scientific and natural areas unless the transmission line would not materially damage or impair the purpose for which the area was designated and no feasible and prudent alternative exists. Economic considerations alone shall not justify use of these areas for a HVTL.

4400.3400. PROHIBITED SITES.

Subpart 1. Prohibited Sites. No large electric power generating plant shall be located in any of the following areas:

- A. national parks;
- B. national historic sites and landmarks;
- C. national historic districts;
- D. national wildlife refuges;
- E. national monuments;
- F. national wild, scenic, and recreational riverways;
- G. state wild, scenic, and recreational rivers and their land use districts;
- H. state parks;
- I. nature conservancy preserves;
- J. state scientific and natural areas; and
- K. state and national wilderness areas.

Subp. 2. Water Use. These areas identified in subpart 1 shall not be designated permitted as a site for an LEPP except for use for water intake or discharge facilities. If the board includes any of these areas within a site for use for water intake or discharge facilities, it may impose appropriate conditions in the certificate of site compatibility permit to which protect these areas for the purposes for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

Subp. 3. Site exclusions when alternative sites exist. No large electric power generating plant shall be located in any of the following areas unless there is no feasible and prudent alternative. ~~Certain resources within the state shall not be designated for LEPGP sites unless all feasible and prudent alternatives would have greater adverse human and environmental impact. Designation of a site in these areas shall be consistent with Minnesota Statutes, section 116C.53, subdivision 1, and shall include conditions to minimize impacts which adversely affect the unique character of these areas.~~ Economic considerations alone shall not justify approval of these areas. These areas are:

- A. state registered historic sites;
- B. state historic districts;
- C. state wildlife management areas (except in cases where the plant cooling water is to be used for wildlife management purposes);
- D. county parks;
- E. metropolitan parks;
- F. designated state and federal recreational trails;
- G. designated trout streams; and
- H. the rivers identified in Minnesota Statutes, section 85.32, subdivision 1.

Subp. 4. Prime farmland exclusion. ~~When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, a~~ No LEPGP site shall be ~~designated~~ permitted where the developed portion of the plant site, excluding water storage reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, and no or where makeup water storage reservoir or cooling pond site facilities shall include more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible and prudent alternative. Economic considerations alone shall not justify the use of more prime farmland. "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5 (a). These provisions do not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

Subp. 5. Sufficient water supply required. No site shall be designated that does not have reasonable access to a proven water supply sufficient for plant operation. No use of groundwater shall be permitted where removal of groundwater results in material adverse effects on groundwater in and adjacent to the area, as determined in each case.

The use of groundwater for high consumption purposes, such as cooling, shall be avoided if a feasible and prudent surface water alternatives less harmful to the environment exists. Groundwater use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

4400.3500. PERMIT APPLICATION REJECTION.

The chair shall reject a permit application at the time it is submitted if the application is for a facility to be located on a prohibited site or along a prohibited route or if the applicant fails to address in the application why no feasible and prudent alternative exists for sites that may be authorized in such a situation.

4400.3600. PERMIT CONDITIONS.

Subpart 1. Generally. The board shall impose in any site permit for a LEPGP or route permit for a HVTL such conditions as the board deems appropriate and are supported by the record.

Subp. 2. HVTL Permits. When the board issues a permit for a route for a HVTL, the board shall specify the design, route, right-of-way preparation, and facility construction it deems necessary. The board may impose a condition in the permit requiring the permittee to construct a HVTL that is capable of expansion in transmission capacity through multiple circuiting or design modifications.

4400.3700. DELAY IN ROUTE OR SITE CONSTRUCTION.

If construction and improvement of a route or site have not commenced four years after the ~~construction permit or site certificate~~ has been issued by the board, the board shall suspend the ~~certificate or permit~~. If at that time, or at a time subsequent, the ~~utility~~ permittee decides to construct the proposed large electric power facility or high voltage transmission line, ~~the permittee it~~ shall certify to the board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit ~~or certificate~~ was issued. If the board determines that there are no significant changes, it shall reinstate the permit ~~or certificate~~. If the board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require the permittee to file a new application.

4400.3800. MINOR ALTERATION IN PERMIT.

Following issuance of a permit for an HVTL or a LEPGP, a utility may apply to the chair for a minor alteration of the permit. A minor alteration is one that does not result in significant changes in the human or environmental impact of the facility. The utility shall submit an application for a minor alteration which contains sufficient information for the chair to determine whether the requested change is a minor alteration and whether the request should be granted. The chair may elect to bring the request to the board for consideration.

4400.3900. REVOCATION OR SUSPENSION OF PERMIT.

Subpart 1. Initiation of action to revoke or suspend. The board may initiate action to consider revocation or suspension of a ~~construction permit or certificate of site compatibility~~ on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act, this chapter, or the permit -has occurred ~~under Minnesota Statutes, section 116C.645, or this chapter.~~

Subp. 2. Hearing. If the board initiates action to consider revocation or suspension of a ~~construction permit or certificate of site compatibility~~, the board shall provide the permittee with an opportunity for a contested case hearing conducted by an administrative law judge from the office of administrative hearings. ~~it will consider in a hearing under Minnesota Statutes, section 116C.645, the following matters:~~

Subp. 3. Finding of violation. If the board finds that a violation of Minnesota Statutes, section 116C.645, or this chapter, or the permit -has occurred, it may revoke or suspend the permit ~~or certificate~~, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit ~~or certificate~~. In determining the appropriate sanction, the board shall consider the following:

~~A. whether a violation of any of the conditions in Minnesota Statutes, section 116C.645, has occurred;~~

~~BA.~~ whether the violation will result in any significant additional adverse environmental effects;

~~CB.~~ whether the results of the violation can be corrected or ameliorated;
and

~~DC.~~ whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

EMERGENCY PERMITS

4400.4000. EMERGENCY PERMIT.

Subpart 1. Application for Emergency Permit. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line due to a major unforeseen event may apply to the board for an emergency permit. The application shall contain the following information:

A. a description of the proposed LEPGP or HVTL;

- B. an explanation of the major unforeseen event causing the emergency situation;
- C. a discussion of the anticipated impacts on the electric system if the proposed facility is not approved within 195 days;
- D. a copy of the written notification to the Minnesota Public Utilities Commission of the major unforeseen event and the need for immediate construction; and
- E. as much of the information required under part 4400.1100 as the utility has available;

Subp. 2. Public Hearing. The EQB shall hold a public hearing on the application for an emergency permit. The hearing shall be held within 90 days after the application is submitted. The public hearing shall be held in accordance with the procedures and requirements of part 4400.2700.

Subp. 3. Final Decision. The board shall make a final decision on an emergency permit within 195 days after the board's acceptance of the application. The board shall grant the emergency permit if it finds the following:

- A. a demonstrable emergency exists;
- B. the emergency requires immediate construction;
- C. adherence to the procedures and time schedules specified in Minnesota Statutes section 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;
- D. the utility will implement mitigating measures to minimize the human and environmental impacts of the facility; and
- E. the utility will carry out the project in an expeditious manner consistent with the emergency.

Subp. 4. Permit Conditions. The board may impose reasonable conditions in an emergency permit.

Subp. 5. Permit Fee. The applicant for an emergency permit shall pay the same fee as would be required for a regular permit for the same project.

EXEMPTIONS FROM MEQB PERMITTING REQUIREMENTS

4400.5000. LOCAL REVIEW OF PROPOSED FACILITIES.

Subpart 1. Local Review. An applicant who seeks a site or route permit for one of the projects identified in subpart 2 shall have the option of applying to those local units of government that have jurisdiction over the site or route for approval to build the project. If local approval is granted, a site or route permit is not required from the board. If the applicant files an application with the EQB, the applicant shall be deemed to have waived its right to seek local approval of the project.

Subp. 2. Qualifying Facilities. Applicants may seek approval from local units of government to construct the following projects:

- A. large electric power generating plants with a capacity of less than 80 megawatts;
- B. large electric power generating plants of any size that burn natural gas and are intended to be a peaking plant;
- C. high voltage transmission lines of between 100 and 200 kilovolts;
- D. substations with a voltage designed for and capable of operation at a nominal voltage of 100 kilovolts or more;
- E. a high voltage transmission line service extension to a single customer between 200 and 300 kilovolts and less than ten miles in length; and
- F. a high voltage transmission line rerouting to serve the demand of a single customer when the rerouted line will be located at least 80 percent on property owned or controlled by the customer or the owner of the transmission line.

Subp. 3. Notice to EQB. Within ten days of submission of an application to a local unit of government for approval of an eligible project, the applicant shall notify the chair that the applicant has elected to seek local approval of the proposed project.

Subp. 3. Referral to EQB. A local unit of government with jurisdiction over a project identified in this section to whom an applicant has applied for approval to build the project may request the EQB to assume jurisdiction and make a decision on a site or route permit. A local unit of government must file the request with the board within 60 days after an application for the project has been filed with any one local unit of government. If one of the local units of government with jurisdiction over the project requests the board to assume jurisdiction, jurisdiction over the project transfers to the board. If the local units of government maintain jurisdiction over the project, the board

shall select the appropriate local unit of government to be the responsible governmental unit to conduct environmental review of the project.

4400.5100. SMALL PROJECTS.

Subpart 1. No EQB Permit Required. A permit from the EQB is not required to construct a power plant of less than 50 megawatts or a transmission line of less than 100 kilovolts. Proposers of such projects must obtain whatever approvals may be required by local governmental bodies with jurisdiction over the project.

Subp. 2. Environmental Review. Proposers of power plants of less than 50 megawatts or transmission lines of less than 100 kilovolts must comply with the environmental review requirements of Minnesota Rules chapter 4410.

ANNUAL HEARING

4400.6000. ANNUAL HEARING.

Subpart 1. Public Hearing. The board shall hold an annual public hearing ~~on a Saturday~~ in November or December in Saint Paul in order to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. The meeting shall be conducted by the EQB staff. At the meeting, the EQB shall advise the public of the permits issued by the EQB in the past year. The EQB shall invite representatives of other state agencies to attend the meeting and be available to answer questions by the public. An audio recording of the hearing shall be maintained. ~~afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the board's activities and duties performed pursuant to the act, or policies set forth in these rules.~~

Subp. 2. Notice. The EQB shall provide at least ten days but no more than 45 days notice of the annual hearing by mailing notice to those persons who have requested notice and by publication in the EQB Monitor. The notice shall be accompanied by a tentative agenda for the hearing.

Subp. 3. Report. The staff shall prepare a report of the annual hearing within sixty days after the hearing and submit it to the board. No action on the report is required.

ANNUAL ASSESSMENT ON UTILITIES.

| 4400.7000. ANNUAL ASSESSMENT ON UTILITIES. For purposes of determining the annual assessment on a utility pursuant to the act, each utility shall, on or before July 1 of each year, submit to the board a report of its retail kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for the preceding calendar or utility reporting year. Upon receipt of these reports, the board shall bill each utility as specified in the act.

G/eqb/pps/rules/pps amendments/July 2001 draft

Minnesota Rules, Chapter 4400.

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